

BILL NO 34 2007

AN ORDINANCE

AN ORDINANCE AMENDING THE CITY OF READING CODIFIED ORDINANCES BY ADDING PART 15 SIDEWALK CAFES TO CHAPTER 10 HEALTH AND SAFETY AND ADDING THE PERMIT FEES TO THE CITY OF READING FEE SCHEDULE.

THE COUNCIL OF THE CITY OF READING HEREBY ORDAINS AS FOLLOWS:

**SECTION 1:** Amending the Codified Ordinances by adding Part 15 Sidewalk Cafes to Chapter 10 Health and Safety as attached in Exhibit A and by adding the permit fees to the City of Reading Fee Schedule.

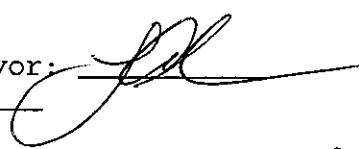
**SECTION 2.** This ordinance shall be effective ten (10) days after its adoption and approval by the Mayor, or repassage by City Council over the Mayor's veto, in accordance with Section 219 of the City of Reading Home Rule Charter, or as set forth in Section 221 of the City of Reading Home Rule Charter.

Enacted May 29, 2007

  
President of Council

Attest:

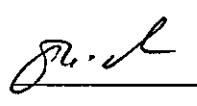
  
City Clerk

Submitted to Mayor: 

Date: 5/30/07

Received by the Mayor's Office: MB

Date: 5-30-07

Approved by Mayor: 

Date: 5/31/07

Vetoed by Mayor: \_\_\_\_\_

Date: \_\_\_\_\_

I, LINDA A. KELLEHER, City Clerk of the City of Reading, Pa., do hereby certify, that the foregoing is a true and correct copy of the original Ordinance passed by the Council of the City of Reading, on the 29<sup>th</sup> day of May, A. D. 20 07. Witness my hand and seal of the said City this 4<sup>th</sup> day of June, A. D. 2007.

  
CITY CLERK

## **EXHIBIT A**

### **PART 15**

#### **SIDEWALK CAFES**

**§10-1500. Declaration of Purpose.** The City of Reading City Council encourages an attractive, functional and economically vital community and shopping areas that are safe and pleasant environments to live near and to do business within. Council recognizes that commercial development is a major identifying feature in a community, offering impressions to residents and visitors alike of the quality of life available. It is Council's intent to encourage commercial growth that contributes to a vibrant and attractive community. As the current Code does not allow Sidewalk Cafes due to public health and safety concerns, Council believes that these activities can greatly contribute to a pedestrian friendly community if they conform to specific public health, and safety requirements defined herein.

**§10-1501. Sidewalk Cafes.** No person shall engage in the operation of a sidewalk cafe, without first applying for and obtaining a permit from the City of Reading Codes Enforcement Office and then operating within the terms and conditions of all applicable City ordinances. The Sidewalk Café Permit enables a restaurant to have outdoor dining, consistent with the terms herein, between April 15<sup>th</sup> and October 15<sup>th</sup> of each calendar year.

**§10-1502. Definitions.** For the purpose of this article, the following terms shall have the following meanings:

**ABUTTING PROPERTY** -- Property contiguous to a public street right-of-way on which a sidewalk cafe will be operated under the terms of this article.

**COMMERCIAL CORE** - is the zoning district defined as the downtown center for government services, offices, shopping, hotels, entertainment and cultural activity.

**CITY ENGINEER** -- The Director of Public Works or his authorized representative.

**HEALTH OFFICER** -- The Health Officer of the City of Reading Codes Enforcement Office or his authorized representative

**MINI CAFE** - a sidewalk café comprised of bistro tables which seats no more than four persons, does not serve alcohol and is without service from wait staff.

**OWNER** -- Includes any owner of fee simple title, part owner, joint owner, tenant in common, tenant in partnership, joint tenant or tenant by the entirety of the whole of the land contiguous to the street right-of-way on which a sidewalk cafe is to be operated under the authority of this article.

**PEDESTRIAN WALKWAY** -- That portion of a sidewalk area which is free of any obstruction, fixture or appurtenance and is used for pedestrian travel.

**PERSON** -- Includes a partnership, corporation, association, trust, estate or other legally recognized entity, as well as an individual.

**PUBLIC SERVICE FACILITY** -- A public telephone, mailbox, bench or other facility provided for the use of the general public.

**RESTAURANT** -- A food service establishment where food is purchased and served in individual portions for consumption on the premises. This term shall not include an establishment which operates exclusively as a caterer, a commissary, a food processing establishment, a mobile food unit, a retail food store or a temporary food service establishment.

**SIDEWALK** -- Any paved area between the curbline and a structure, whether publicly or privately owned, which is used by the public or open to use by the public.

**SIDEWALK CAFE** -- An outdoor dining area operated by a restaurant, generating 65% of its annual revenue from food sales, serves alcohol, has tables that seat two or more patrons, provides wait staff for its patrons and is located on a sidewalk area or other designated public place and containing removable tables, chairs, plants and related appurtenances, which is not located on or does not encroach upon the pedestrian walkway as established under the provisions of this article. It shall not be enclosed by fixed walls and shall be open to the air, except that it may have a canopy. It may but is not required to abut its sponsoring restaurant.

**STREET RIGHT-OF-WAY** - The entire right-of-way of a public highway, public alley or public road, including the designated sidewalk areas

#### **§10-1503. Sidewalk Cafe - Issuance of Permit; Display.**

It shall be unlawful for any person, firm, corporation, transient merchant, church, club, charitable institution, hawker or peddler to vend, sell or dispose of or offer to vend, sell, dispose of or display, any food, goods, wares, merchandise, produce or vegetables on any public walk, street, alley or anywhere within the City of Reading without registering with the City Codes Enforcement Office and the Tax Division.

The phrase "sidewalk café" in this ordinance will be applied to both sidewalk cafes and mini-cafes unless otherwise stated.

#### **§10-1504. Sidewalk Cafes – Issuance of Permit, Display**

The Codes Enforcement Office is hereby authorized to grant revocable licenses for the use of the sidewalks for sidewalk cafes in the Commercial Core Zoning District upon the following terms and conditions. Registration shall be on a permit approved by the City Council. When the Codes Enforcement Office has approved the issuance of a sidewalk cafe permit, the applicant shall be issued a permit. The permit shall contain the information required on the application, the expiration date, and one of the photographs submitted with the application. The permit shall be carried by the applicant at all times when engaged in sidewalk café activities and shall be exhibited for inspection for any person.

- A. The applicant shall comply with all of the terms and conditions for a sidewalk display license, set forth in this Part, including, without limitation, the indemnification, and insurance requirements.
- B. The applicant shall delineate the cafe area with a removable physical barrier separating patrons from pedestrian traffic. The delineation and layout of the cafe area shall be consistent with the site plan submitted by the applicant.
- C. No sidewalk cafe may be operated except:
  - (1) As an accessory to a restaurant or retail food store lawfully operating on the first floor of the premise.
  - (2) On the sidewalk in front of the principal place of business of such entity.
  - (3) By the entity which operates the restaurant or retail food store.
- D. Sidewalk cafes shall operate only during the hours that the facilities kitchen is open for service, but not after 11 p.m.
- E. Furnishings of a sidewalk cafe shall consist solely of readily removable umbrellas, covers, railings, tables, chairs, planters containing live plants, waste receptacles and accessories. Furnishings may not be attached, even in a temporary manner, to the sidewalk or other public property or to any building or structure. All furnishings shall be removed from the sidewalk and stored in an approved manner when the sidewalk cafe is not in operation.
- F. All food must be prepared within the existing restaurant or retail food store upon which the cafe permit has been granted.

G. The applicant shall be responsible for obtaining, maintaining in full force and effect and complying with the terms and conditions of any permit which may be required under any other law or regulation for the serving of food or beverages, including alcoholic beverages, at a sidewalk cafe.

H. Sidewalk cafes, the public property on which they are located and the surrounding area shall at all times be kept free and clear of litter, debris and any substance that may damage the sidewalk or cause pedestrian injury.

I. The applicant shall maintain a sufficient number of receptacles for the disposal of waste, properly covered to prevent infestation by insects. Such receptacles shall be emptied as often as is necessary, but in no event less than once per day.

J. All sidewalk cafes and attendant facilities shall be inspected by the Coders Enforcement Office, or his designee and the Public Works Director, or his designee prior to the issuance of a sidewalk café permit.

K. Acceptance of a sidewalk cafe permit is an express acknowledgment and consent to the terms and restrictions set by this article and the Health Officer. The grant and usage of such license is a privilege, not a right, subject to reasonable restrictions as set out herein or as may be promulgated by the regulatory authority.

L. As an express condition of the acceptance of a permit hereunder, the recipient agrees to police for trash and debris an area extending 15 feet in each direction from the outermost portion or boundary of the sidewalk cafe at least twice daily.

#### **§10-1505. Sidewalk Café Design Standards & Regulations.**

All sidewalk cafes shall comply with the following standards:

A. A sidewalk cafe shall have a pedestrian walkway with a clear unobstructed width of three feet between the sidewalk cafe and any obstacle (tree, pole, post, sign, planting area, bus shelter, etc.). The pedestrian walkway shall be provided with an unobstructed height of seven feet between the ground plane and an overhead obstacle (tree branch, overhead sign, awning, etc.).

B. No sidewalk cafe may be permanently located within the sidewalk area by means of raised deck platform, fence, walls or other structures or enclosed by fixed walls, except that sidewalk cafe boundaries may be delineated by the use of temporary barriers such as balustrades, cordons or railings. Any such temporary barriers must be easily removed and three feet or less in height above the sidewalk. Under no circumstances shall temporary barriers as authorized hereunder be allowed in the identified pedestrian walkway, nor shall a temporary barrier be affixed to the sidewalk or to any permanent structure, except that it may be attached by removable clips or devices approved in advance by the City Engineer.

C. The City Engineer may approve temporary platforms or similar structures for the sole purpose of leveling sidewalk cafe areas on which sidewalk cafes are located.

D. No sidewalk cafe shall be situated:

- (1) Within six feet of any pedestrian crossing as defined in City of Reading Codified Ordinances;
  - (2) Within five feet along the street line of any fire hydrant or other emergency facility;
  - (3) Within five feet of any driveway;
  - (4) Within 10 feet to the rear of any sign marking a designated bus stop;
  - (5) In a manner which restricts sight easements of vehicular traffic; or
  - (6) In a manner which obstructs traffic control devices or traffic signs.
- E. All sidewalk cafes shall be open to the air.
- F. Canopies and awnings may be permitted in accordance with specifications, as delineated by the City Building Code and the City Zoning Code which relate to height, placement, interference with pedestrian passage and traffic sight easements. HARB approval may be required.
- G. Sidewalk cafes shall in no way obstruct the ingress to or the egress from any building or business.
- H. All sidewalk cafes and their attendant facilities or improvements shall comply with clearances required for structures in relation to utility lines as provided in the City Building Code.
- I. No sidewalk cafe shall be located on the sidewalk between the building facade and a bus stop.
- J. No portion of a sidewalk cafe or its facilities, appurtenances, planters, shrubs, tables, chairs or other materials shall be permitted in the pedestrian walkway as defined in this article.
- K. Sidewalk cafes shall provide and maintain adequate lighting in and around the pedestrian walkway so as to allow sidewalk users to observe and avoid obstructions.
- L. Sidewalk cafes shall not obstruct access to hydrants, streetlights, telephones, mailboxes, transit stops or any other public service facility on the sidewalk area or street.
- M. No signs shall be hung or attached to any portion of the sidewalk cafe, except those signs that are in compliance with provisions of the City Zoning Ordinance.
- N. A sidewalk cafe may be expanded to an abutting property with the written permission of that abutting property owner.
- O. In the event that the proposed sidewalk cafe is not in front of a restaurant or abutting property, the applicant must provide written permission from the owner of the property and reasonable procedures that a sidewalk cafe can be operated in a noncontiguous location.

#### **§10-1506. Sidewalk Cafe Regulations.**

A sidewalk cafe authorized and operated pursuant to this article shall:

- A. Comply with all plans submitted to and approved by the Codes Enforcement

Office.

- B. Serve alcoholic beverages only in conformance with Pennsylvania Liquor Control Board requirements.
- C. Operate only during the same hours the kitchen that the kitchen is open for service. All patrons must be vacated from the sidewalk cafe and all utensils, containers or any other serving materials used in the operation of the sidewalk cafe or within the area used by the sidewalk cafe shall be removed from the sidewalk cafe area within one hour after the kitchen closes; provided, however, that any railing, flooring or other support or enclosure used in the assembly, operation or enclosure of the sidewalk cafe may be allowed to remain on the sidewalk area if specifically permitted in the Code Enforcement Office's approval of the sidewalk cafe plans as described under §10-1507 above.
- D. Remove all sidewalk cafe structures by October 30, and not install prior to April 1, in any year for which a license is granted.
  - (1) In the event that favorable weather conditions should prevail, a sidewalk cafe may temporarily reopen on a daily basis during the time period set forth in Subsection D above, with the approval of the Codes Enforcement Office. All tables, chairs and other materials must be removed every day by sundown.
- E. Use no food serving or food service equipment to hold, store, heat, warm, cool, chill or otherwise keep food to be served outside of the sponsoring restaurant for use in or by a sidewalk cafe.
- F. Serve no food or beverages to a patron at a sidewalk cafe unless that patron is seated at a table.
  - (1) If the sidewalk cafe is located adjacent to the sponsoring restaurant, in lieu of Subsection F above, the following is allowed:
    - (a) Self-service by patrons, without table service; or
    - (b) Facilities for standing instead of sitting.
- G. Play no music, from whatever source (acoustical, electric, or other) on the premises outdoors, except in conformance within Chapter 6 Conduct, Noises of the Codified Ordinances.
- H. Police for trash and debris an area extending 15 feet in each direction from the outermost portion or boundary of the sidewalk cafe at least daily.
- I. Comply with all other provisions of the Codified Ordinances of the City of Reading.

#### **§10-1507. Sidewalk Café Permit Fees.**

- A. The permit fee for a sidewalk cafe shall be \$275 for the calendar year.
- B. The permit fee for a mini-café shall be \$25 for the calendar year.

C. There shall be no prorating or rebating of permit fees.

**§10-1508. Sidewalk Café Application Requirements.**

Each applicant for a license under this article shall submit three copies of his application and plans for the sidewalk cafe to the Codes Enforcement Office, who shall issue a permit upon compliance with the terms and conditions of this article. Application must be made within 14 business days prior to the intended start date. Applications for sidewalk cafe permits shall include the following:

- A. The name and street address of the applicant.
- B. The name and street address of the owner of the sidewalk cafe, of the owner of the underlying freehold and/or abutting property owner if not the same person and:
  - (1) A description of the owner of the abutting property, if other than a natural person, including the legal status (corporation, partnership, etc.) and a general description of the type(s) of business operated on the abutting property.
  - (2) Letter from the abutting property showing their support for the operation of a sidewalk café.
  - (3) Written authority in the form of a power of attorney from the owner to submit the application if the applicant is not the owner of the abutting property.
- C. The name and street address of the registered agent for the service of process, if the applicant represents a corporation; or the names and street addresses of the officers or partners, if the applicant represents an association, partnership or other entity.
- D. The name and street address of the operator, manager or other person responsible for the operation of the sidewalk cafe.
- E. The name under which the sidewalk cafe will be operated.
- F. The street address and the City food establishment license number of the restaurant operating and servicing the sidewalk cafe.
- G. A copy of the current City Business License.
- H. A site plan drawn to a scale of 1/2 inch equals one foot, showing:
  - (1) The entirety of the sidewalk abutting the property of the owner;
  - (2) The frontage of the property proposed for the sidewalk cafe;
  - (3) All abutting properties;
  - (4) All existing sidewalk features, including but not limited to trees, utility poles, sign poles, fire hydrants, permanent litter receptacles, telephone booths, news vending racks and mailboxes;
  - (5) Any bus stops within 25 feet on either side of the proposed sidewalk cafe area; and



- (6) Detailed drawings of legible proportions showing the limits of the proposed sidewalk cafe site, the design dimension and proposed location of all proposed temporary structures (i.e., canopies, umbrellas, planters, landscaping, tables, chairs, all exterior lighting, electrical outlets, etc.), the proposed pedestrian walkway and the side and front elevations of the proposed sidewalk cafe.
- I. The seating capacity of the proposed sidewalk cafe.
- J. A copy or copies of the certificate or certificates of insurance required to be provided.
- K. If the serving of alcoholic beverages is proposed, a copy of the current state liquor license that will allow or can be amended to allow applicant to serve alcoholic beverages in the sidewalk cafe.

**§10-1509. Sidewalk Café - Review of Application.**

- A. Before any permit is issued pursuant to this article, the plans submitted to the Codes Enforcement Office pursuant to this article shall be referred to and approved by the Public Works Director, Reading Police Department and Department of Fire and Rescue Services.
- B. The Codes Enforcement Office shall determine if the applicant has:
  - (1) Obtained the approval of the Public Works Director and Building Official for any railing, flooring or other support or enclosure used in the assembly, operation or enclosure of the sidewalk cafe. No such railing, flooring or other support or enclosure shall be considered an erection of, addition to or a structural alteration of a building or structure under applicable City Building Code unless such railing, flooring or other support or enclosure is permanently attached to such building or structure.
  - (2) Obtained the approval of the Historical Architectural Review Board (HARB) if the sidewalk café is located within any area designated as part of an historic district and if the applicant proposes any facilities which are under the jurisdiction of the HARB. The HARB shall use the review criteria for such plans relating to a sidewalk cafe's specific location, size and structure, for its compatibility of scale, design and alteration in the plans for a sidewalk cafe approved by the HARB requires reapproval from the HARB. Once approval is granted by the HARB, the approved plans are valid and do not require annual reapproval. The HARB shall only review applications which have the written approval from the Public Works Director as specified herein.
  - (3) Complied with all rules, regulations and specifications of this article.
- C. The Codes Enforcement Office may impose any other restriction on the location, size or design of the sidewalk café that, in his sole judgment, protects the health, safety and welfare of the public.

#### **§10-1510. Conditions for Issuance of Permit.**

- A. Upon approval by the Codes Enforcement Office of the plans submitted by the applicant and upon the applicant furnishing to the City of Reading the following, the Codes Enforcement Office shall issue a permit, valid through the end of the calendar year:
  - (1) A hold-harmless agreement executed by the applicant and indemnifying the City against loss, including costs and expenses, resulting from injury to person or property as a direct or indirect result of the operation of the sidewalk cafe. Said hold-harmless agreement shall be subject to the approval of the City Solicitor.
  - (2) Proof of liability insurance in the amount of \$500,000 per individual and \$100,000,000 per occurrence.
  - (3) If applicable, proof that the applicant has a state liquor license authorizing him to serve alcoholic beverages in his/her sidewalk cafe.
- B. Sidewalk cafe Permits are not transferable. Changes in ownership/operation require reapplication for a permit.

#### **§10-1511. Removal of Improvements.**

- A. If the City incurs any costs in removing any equipment or improvements from a sidewalk cafe for the following reasons: the establishment failed to remove equipment at the close of the business day, the establishment went out of business or the establishment failed to renew its license, within 30 days of the close of the outdoor season, the City shall remove and store all equipment and bill the property owner for the actual costs of labor, materials, equipment or any other item, service, including storage costs, or expense incurred by the City to correct such violation, plus any additional administrative fees. The equipment removed shall remain in the City's possession until the bill for removal and any fines or fees are paid in full.
- B. Any bill for such removal of equipment undertaken pursuant to this chapter shall be billed to and paid by the property owner within 60 days. Upon failure of the property owner to pay the amounts due within 60 days, the City shall assess this uncollected debt on the property taxes of this building.

#### **§10-1512. Permit Renewal.**

A sidewalk cafe permit may be renewed annually, upon review of the renewal application and complaint history, if any, which shall be provided by the Codes Enforcement Office, Reading Police Department, Department of Public Works, and Department of Fire and Rescue Services Bureau of Police. Each agency shall provide to the Codes Enforcement Office copies of any inspection results, complaints filed

and citations issued concerning the sidewalk cafe under consideration. The renewal fee for the renewed permit shall be as stipulated in §10-1507 above.

**§10-1513. Written Notice of Violations; Suspension of Permit.**

Upon finding by either the Codes Enforcement Office or Reading Police Department that an applicant has violated any provisions of this article, the Codes Enforcement Office shall give written notice to the applicant to correct said operational violation. Upon failure to correct said operational violation within the time frame specified, the Codes Enforcement Office may take appropriate action, as necessary, to maintain the Pedestrian Walkway. The Codes Enforcement Office may suspend the applicant's permit issued pursuant to this article, as well as pursue prosecution in accordance with the requirements herein. The Codes Enforcement Office shall, in his/her sole judgment, give a violator reasonable time to repair any structural damage or physical violation of any provision of this article. An appeal before City Council shall be accorded if requested.

**§10-1514. Violations and penalties; effect on eligibility for permit.**

- A. Whoever violates any provisions of this article shall, upon conviction thereof in a summary proceeding, be fined not less than \$200 and not more than \$1,000 for each offense, to be collected as other fines and costs are by law collectible, or imprisoned for not more than 90 days, or both. Each day during which a violation occurs shall constitute a separate offense.
- B. Any person who is convicted of a violation of any of the provisions of this article shall have his permit suspended for one full year and shall not be eligible for another license until the expiration of one full year.
- C. Any person who fails to remove a sidewalk structure by October 30, as provided for in §10-1506, shall not be eligible for a permit in any following year.
- D. Failure to observe any of the conditions set out herein is grounds for revocation of a license. Prior to such revocation, the Codes Enforcement Office shall give 10 days' written notice to the permit of his violation of or his failure to observe a general condition as set out above. If the permittee requests a hearing prior to the expiration of that ten-day notice period, the Codes Enforcement Office shall hold a hearing to determine if the permit should be revoked. The permittee may present evidence in his own behalf if he so desires. The decision in regard to revocation may be appealed to City Council. If the permittee fails to request such a hearing, the revocation shall become effective upon the expiration of the ten-day notice period. If a permit granted under this section is revoked, all tables, chairs and other appurtenances used as a part of the sidewalk cafe shall be immediately removed from the sidewalk.
- E. This article and the foregoing penalties shall not be construed to limit or deny the

right of the City or any person to such equitable or other remedies as may otherwise be available with or without process of law.

**§10-1515. Determination on Application.**

The Codes Enforcement Office shall grant or deny an application for a permit pursuant to this article within ten business days of its complete submission.

**§10-1516. Reservation of Rights.**

Neither the adoption of this article nor the granting of any permit pursuant hereto shall be construed as a waiver of any right, privilege or immunity of the City of Reading with respect to streets and sidewalks, whether express or implied.

**§10-1517. Penalties for Offenses**

Any person who shall violate any of the provisions of this article shall be liable to prosecution and shall, upon conviction thereof, be liable to a fine that shall not be less than \$300 or exceed \$1000, imprisonment for not more than 15 days, or both such fine and imprisonment.